

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 24, 2007

No. 07-10253
Conference Calendar

Charles R. Fulbruge III
Clerk

MICHAEL ANTHONY DAVIS

Plaintiff-Appellant

v.

NFN BAKER, Mailroom Supervisor and Clerk, in her Individual and Official
Capacities

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:06-CV-886

Before JOLLY, BENAVIDES, and STEWART, Circuit Judges.

PER CURIAM:*

Michael Anthony Davis, Texas prisoner # 872268, appeals the dismissal of his pro se, in forma pauperis (IFP), 42 U.S.C. § 1983 complaint as frivolous under 28 U.S.C. §§ 1915(e) and 1915A(b). Davis's claim that a prison official violated his constitutional rights by opening Davis's incoming legal mail outside his presence is not cognizable under § 1983. See *Brewer v. Wilkinson*, 3 F.3d 816, 825 (5th Cir. 1993).

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Davis's appeal lacks arguable merit, and it is dismissed as frivolous. See *Howard v. King*, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2. The district court's dismissal and the dismissal of the instant appeal count as strikes under 28 U.S.C. § 1915(g). See *Adepegba v. Hammons*, 103 F.3d 383, 387 (5th Cir. 1996). Davis also accumulated a strike in *Davis v. Inmate Trust Fund*, No. A-03-CA-732-SS and a strike in *Davis v. Baker*, No. 4:07-CV-068-A. Accordingly, Davis is now barred from proceeding IFP in any civil action or appeal filed while he is incarcerated or detained in any facility unless he is under imminent danger of serious physical injury. See § 1915(g). Davis's motions for the appointment of counsel and for oral argument are denied.

APPEAL DISMISSED; MOTIONS DENIED; SANCTION IMPOSED.